
Office of Inspector General

Audit Report

FTA CAN IMPROVE PROCEDURES TO ENSURE MORE EFFECTIVE IMPLEMENTATION OF THE CHARTER SERVICE REGULATION

Federal Transit Administration

Report Number: MH-2012-132

Date Issued: May 17, 2012





Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION**: FTA Can Improve Procedures To
Ensure More Effective Implementation of the
Charter Service Regulation
Federal Transit Administration
Report No. MH-2012-132

Date: May 17, 2012

From: Joseph W. Comé 
Assistant Inspector General for
Highway and Transit Audits

Reply to
Attn. of: JA-40

To: Federal Transit Administrator

For over 30 years, private charter operators and public transit agencies have debated the conditions under which federally funded transit agencies can provide charter service without hindering the economic opportunities of private charter companies. Some public transit agencies view Federal procedures for charter service as an administrative burden, while some private charter operators claim that publicly funded transit agencies will force them out of business. The Federal Transit Administration (FTA) is responsible for the charter service regulation, first issued in 1976, which generally prohibits public transit agencies that receive FTA funds from providing charter service when a private charter operator is interested in providing the service. This regulation impacts a wide spectrum of transportation services throughout the country, from transportation to national sporting events in major cities to smaller events in rural communities, such as transportation for the elderly. In January 2008, FTA amended the charter service regulation to clarify disputed provisions regarding competition between private charter operators and federally funded public transit agencies.¹

¹ FTA published the charter service final rule on January 14, 2008 (73 FR 2326). The revision was FTA's response to congressional direction to reexamine the charter service regulations. This directive was included in a Joint Explanatory Statement of the Committee of Conference of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, enacted on August 10, 2005. FTA last made significant revisions to the regulation in 1987.

The Senate Committee on Appropriations directed our office to study FTA's charter service regulation and its effect on the quality and price of transit services.² Specifically, we (1) evaluated FTA's implementation of the charter service regulation and (2) assessed the impact of FTA's 2008 revisions to the charter service regulation at selected locations.

To conduct this audit, we selected 4 case study locations in which 13 events occurred. We selected these case studies based on geographic location, population, receipt of Federal funds, and information gathered through discussions with public and private stakeholders. We visited or contacted 46 organizations, interviewed officials from FTA, and reviewed FTA's private charter registration database. Although we identified specific issues involving each case study, the unique nature of each community prevented us from making nationwide projections based on the results of our fieldwork. We conducted this audit from November 2010 through March 2012 in accordance with generally accepted Government auditing standards. Exhibit A describes our scope and methodology, and exhibit B lists the organizations we visited or contacted.

RESULTS IN BRIEF

In response to congressional direction, FTA in 2008 put improved procedures in place for overseeing the implementation of the charter service regulation. Examples of these improvements include procedures for responding to industry, public transit agency, and public concerns and for notifying private charter operators of potential business opportunities. However, we identified weaknesses in FTA databases designed to implement the new procedures. For example, FTA established a registration database of more than 600 private charter operators to better apprise them of potential business opportunities, but the database includes inaccuracies in 39 (over 6 percent) of the 609 total records and lacks a link to Federal Motor Carrier Safety Administration (FMCSA) information on private charter industry performance and safety. These weaknesses reduce the database's usefulness to public transit agencies and private charter operators. For instance, FTA's database listed 24 private charter operators as active even though FMCSA had revoked their operating authority.³ FTA also designated an ombudsman to facilitate a formal process for FTA to respond to private charter operators, public transit agencies, and other stakeholders' concerns⁴—through a public docket

² S. Rep. No. 111-69 at 92 (August 2009) (Senate Committee Report accompanying H. Rep. No. 3288, the bill making fiscal year 2010 appropriations for the Department of Transportation and Housing and Urban Development and Related Agencies).

³ FMCSA's Licensing and Insurance and Safety and Fitness Electronic Records databases contain company profile and safety related information on private companies providing passenger carrier services, including status of operating authority.

⁴ FTA's Office of Chief Counsel issues advisory opinions in response to questions submitted by any interested party about factual matters regarding charter service.

system—about how to apply the regulations. Yet, the public docket system contained some incomplete, outdated, and duplicate information. For example, FTA did not post a response to a request for an advisory opinion until over 1 year after the initial request was received. FTA’s database problems and delayed postings of decisions in the public docket system create the risk of transit agencies and private charter operators’ misunderstanding the regulation and could limit the effectiveness of FTA’s new procedures.

Revisions to the charter service regulation had varying impacts on the cost, availability, and quality of charter services in our case study communities. Out-of-pocket costs for consumers and events sponsors increased in 6 of 13 events we reviewed. For example, the out-of-pocket costs for fans using transportation from park-and-ride lots to major sporting events in Baltimore, Maryland, increased from \$10 to \$20 when private charter operators began offering the service. However, we could not compare overall costs of charter services because of a lack of available data and differences in how public transit agencies and private charter operators determine the costs of their charter services.⁵ Additionally, the revised regulation impacted the availability of services at certain locations. For example, public transit agencies in some rural and nonurbanized areas were unclear about how to use the exceptions for human service organizations, such as groups transporting the elderly, and consequently, stopped offering transportation for such trips. We also identified impacts of the revised regulation on the quality of accommodating disabled passengers, mitigating traffic congestion, and planning for emergencies at large events. For example, some event sponsors in Ames, Iowa, and Seattle, Washington, reported increased loading and unloading times for passengers after the transition to private charter operators. Although FTA conducted initial outreach to educate charter service stakeholders, these stakeholders—especially in rural communities we visited—continue to request clarification of FTA’s charter service requirements.

We are making a series of recommendations to improve FTA’s implementation of the charter service regulation.

BACKGROUND

In response to concerns expressed by both public transit agencies and private charter operators over the FTA regulations on charter service, Congress directed FTA to initiate a rulemaking to identify and implement improvements to the regulations. On January 14, 2008, FTA published a final rule that made significant

⁵ Private charter operators were reluctant to share pricing information due to its business sensitive nature. We received pricing information from only 1 of the 11 private charter companies we interviewed. In addition, public transit agencies determined their prices using only the marginal cost of the service without considering Federal subsidies for capital expenses, such as buildings and transit vehicles.

changes to the regulation (see exhibit C for a description of the detailed changes in the regulation).⁶ The regulation applies to recipients of Federal financial assistance, primarily public transit agencies. FTA does not regulate private charter service markets.

Specifically, the rule:

- revised the definition of charter service, while also offering flexibilities through exceptions in the rule to fulfill public transit agencies' community-based public transportation missions.
- created a private charter registration database that allows private operators to indicate their geographic service area of charter service and provides a mechanism for public transit agencies to notify private charter operators of business opportunities.
- identified exceptions to and exemptions from the rule when public transit agencies may provide charter service. For example, public transit agencies can provide charter service by petitioning the FTA Administrator for an exception due to (1) events of regional or national significance, (2) hardship for areas with a population less than 200,000, and (3) unique time-sensitive events.
- revised the processes through which private charter operators and public transit agencies may request advisory opinions and file complaints and began posting FTA decisions on the Federal Document Management System (FDMS).
- revised penalties for violations of the regulation and FTA processes for investigations and hearings related to complaints.
- created a qualified human service registry that allows organizations that serve individuals with low income, advanced age, or disabilities to register with FTA to receive free or reduced rate services from a public transit agency.

In December 2009, Federal legislation⁷ included an exemption from the charter service regulation to restore the ability of King County Metro Transit to provide charter service to a number of major sporting and special events in Seattle, Washington. Private charter bus associations sued FTA, arguing that the Seattle exemption was unconstitutional. In June 2010, the U.S. District Court for the District of Columbia issued an opinion favoring the private charter bus associations. FTA appealed the decision. In June 2011, the U.S. Court of Appeals

⁶ From May 2006 to March 2007, FTA conducted a negotiated rulemaking process that involved representatives from key stakeholder groups. Although the stakeholders did not reach a consensus on all issues, the negotiated rulemaking formed the basis for the revised regulation that FTA published on January 14, 2008.

⁷ Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, § 172 (2009).

for the District of Columbia issued a decision⁸ that overturned the lower court ruling that had effectively blocked the exemption. As a result of the 2011 decision, King County Metro Transit is allowed to continue providing charter service to major events in Seattle.

FTA ESTABLISHED IMPROVED PROCEDURES TO IMPLEMENT THE CHARTER SERVICE REGULATION, BUT DATA WEAKNESSES REDUCE THEIR EFFECTIVENESS

FTA put improved charter service procedures in place to clarify requirements, maintain flexibility, and increase transparency. These include (1) designating an ombudsman to facilitate FTA's response to industry, public transit agency, and public concerns; (2) establishing a private charter registration database that notifies private charter operators of potential business opportunities; and (3) creating a process for Qualified Human Service Organizations (QHSOs) that serve individuals with low income, individuals with disabilities, or the elderly to receive free or reduced rate transportation services. The regulation also revised penalties for public transit agencies that violate charter service requirements. However, we identified data quality and timeliness problems in two key systems designed for ensuring effective implementation of the regulation—the private charter registration database and the public docket system through which FTA posts advisory opinions and complaints. Additionally, FTA missed an opportunity to facilitate public access to important private charter information that FMCSA, the lead agency for bus safety, tracks and maintains.

FTA Improved Oversight Procedures in the 2008 Revision

FTA's 2008 revision of the regulation established agency procedures intended to clarify requirements, maintain flexibility, and increase transparency. Significantly, the regulation created a new ombudsman position in the Office of the Chief Counsel. The ombudsman receives direct inquiries related to charter service and facilitates the centralized advisory opinion and complaint process. Previously, complaints and inquiries were submitted to 1 of the 10 FTA regional offices for processing. According to industry and public transit agency officials, creating the ombudsman position has improved the consistency and timeliness of responses to questions related to the regulation. In addition to the ombudsman position, FTA now maintains a public docket system to track and disseminate consistent information on agency advisory opinions and interpretations of requirements, complaints filed against public transit agencies or private charter operators, and petitions to the FTA Administrator for exceptions under the regulation.

⁸ American Bus Association v. Rogoff, 649 F.3d 734 (D.C. Cir. 2011).

FTA also established a private charter registration database that allows public transit agencies that receive requests to provide charter service to notify private charter operators of business opportunities. When a private charter operator expresses interest in a charter service, the public transit agency can no longer be a candidate for providing that service. Before the 2008 revision, there was no systematic way for public transit agencies to inform private charter operators of these opportunities. At the time of our review, private charter operators seeking charter service opportunities had submitted 609 records to the private charter registration database.

Additionally, FTA created exceptions for QHSOs to receive free or reduced rate services from a public transit agency. These exceptions are intended to support transit agencies providing community-based services to individuals with low income, advanced age, or disabilities. The revised charter service regulation provides an automatic exception to the regulation for QHSOs that receive funding from 1 of 64 Federal human service programs listed in the regulation.⁹ Moreover, the revised regulation creates a registry for QHSOs that do not receive assistance from 1 of 64 Federal human service programs listed in the regulation and allows them to apply for an exception to the regulation. At the time of our audit, FTA had approved 54 QHSOs to seek services from public transit agencies.

Finally, FTA's 2008 revision modified the penalties for transit agencies violating the charter service regulation. Specifically, transit agencies that violate the regulation face fines ranging from \$100 to \$25,000 depending on the severity of the violation. For example, a South Dakota public transit agency was fined \$100 for providing charter service for a bachelor party. FTA also assesses compliance with this rule during its triennial reviews¹⁰ and State management reviews of grantees.

Data Weaknesses Reduce FTA's Effectiveness in Implementing the New Procedures

Our review identified weaknesses in FTA databases, including data quality issues, delayed posting of information, and the absence of a link to FMCSA's private charter industry performance and safety information. Currently, FTA conducts limited reviews of the private charter registration database and the charter service information in the public docket system where FTA posts advisory opinions and complaints. Without access to accurate, timely, and relevant information, the

⁹ In Appendix A of 49 C.F.R. 604, FTA provides a list of Federal programs providing funding for human services entitled *Listing of Human Service Federal Financial Assistance Programs*. If a QHSO receives funding from one of these programs, it does not have to register with FTA in order for public transit agencies to provide community-based charter services.

¹⁰ Congress mandates compliance reviews every 3 years for transit agencies receiving Section 5307 funding. FTA uses the triennial review as a management tool for examining grantee performance and adherence to current FTA requirements and policies. The review examines 23 areas, including charter service.

effectiveness of FTA databases to facilitate charter service opportunities and to keep stakeholders informed is reduced.

Of the 609 records in the private charter registration database, over 6 percent were inaccurate, including 17 records with no geographic service area listed and 22 duplicate records. Records that do not designate a geographic area would not result in private charter operators receiving information on potential business opportunities. According to FTA, the charter service ombudsman reviews the private charter registration database to remove outdated information and to compare the information to FMCSA's databases. Our review found only one record that had not been updated within 2 years, as required by the regulation.¹¹ FTA compares its data with FMCSA's databases to verify the USDOT number,¹² contact information and address, and the number of vehicles stated in the registration. However, we found that FTA's reviews of the private charter registration database did not identify some private charter operators with potential operating authority and safety concerns. We compared the information in FTA's private charter registration database with safety and company profile information that FMCSA, the regulator of the passenger carrier industry, maintains. We identified 24 operators whose operating authority FMCSA had involuntarily revoked¹³ and 4 operators who had authority to operate in only 1 State, yet had registered with FTA to operate in multiple States. Additionally, FMCSA had placed one private charter operator registered with FTA out of service for employing drivers who did not meet medical and driver's license qualifications and for refusing to pay fines for those violations.

Further, FTA has yet to fully leverage FMCSA's passenger-carrier industry data to identify inaccuracies in private charter information submitted to FTA. As the lead agency focused on the safety of the motor and passenger carrier industry, FMCSA's Licensing and Insurance database and Safety and Fitness Electronic Records (SAFER) database can provide an important tool to help FTA verify a private charter's insurance coverage, confirm the charter's geographic service area, validate an operator's proper operating authority, and check each charter's safety rating. Although FMCSA has created a Web site for persons or

¹¹ Although the charter service regulation applies only to FTA grantees and FTA does not regulate private charter operators, the revised regulation requires that private charter operators provide current, accurate, and updated information at least every 2 years or FTA removes their information from the database.

¹² Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with FMCSA and must have a USDOT number. The USDOT number serves as a unique identifier when collecting and monitoring a company's safety information acquired during audits, compliance reviews, crash investigations, and inspections.

¹³ Involuntary revocation occurs when FMCSA cancels a carrier's authority to operate. For example, FMCSA could cancel a carrier's authority if the carrier's insurance lapses. Operating authority could be reinstated once a carrier has corrected deficiencies.

organizations interested in passenger-carrier safety information,¹⁴ FTA does not provide a direct link to it on its charter service Web site.

We also found data quality and timeliness problems in the Federal Document Management System (FDMS), the system FTA uses to post advisory opinions, petitions for exception, complaints, cease and desist orders, complaints for removal, and hearings regarding the charter service regulation. Of the 112 FDMS records we reviewed related to charter service, we identified 3 duplicate records and 1 request posting that did not link to a corresponding document. We also found 28 advisory opinions, complaints, and petitions—some going as far back as 2008—that did not have decisions posted on FDMS. Additionally, FTA has not consistently met its goal of responding to advisory opinions within 10 days of a request. Rather, its average response time is 38 days. For example, FTA responded directly to individual parties involved in a March 2010 request for an advisory opinion in May of 2010, but the response was not posted on FDMS until July 2011. According to FTA, delays in responding to requests for advisory opinions are caused by the need to collect information from the various parties involved in an event and the associated services provided. However, arrangements for charter services are time-sensitive due to event scheduling. FTA's delayed posting of interpretations of the regulation and actions related to charter service creates the risk of event sponsors, private charter operators, and public transit agencies misinterpreting the regulations' requirements.

IMPACT OF THE REGULATION ON COST, AVAILABILITY, AND QUALITY OF CHARTER SERVICES VARIED, BUT FTA CAN DO MORE TO ENSURE CONSISTENT INTERPRETATION OF THE REGULATION

The impact of FTA's revised charter service regulation on the cost, availability, and quality of charter services in our case study communities varied according to the uniqueness of each community and their transportation needs. The most significant impacts on transportation services stemmed from the revised definition of charter service. For example, many transportation services provided for public events, such as festivals or sporting events, that public transit agencies viewed as public transportation under the old definition of charter service, are now considered charter service. Several private charter operators and public transit agencies misunderstood the revised regulation, which affected the availability and quality of service they provided. While FTA initially reached out to help providers understand and comply with the revised regulations, those efforts eventually subsided.

¹⁴ Bus and Passenger Carrier Information Web site: <http://www.fmcsa.dot.gov/safety-security/pcs/Index.aspx>.

Costs, Availability, and Quality of Charter Service Varied in Each Case Study

Costs. The out-of-pocket costs to consumers and events sponsors increased for 6 of the 13 events we reviewed in our case study locations—a major concern of event sponsors and transit agencies. For example, we found that riders traveling from park-and-ride lots to major sporting events in Baltimore, Maryland, experienced a \$10 increase in out-of-pocket costs when private charter operators began providing the service. Additionally, a non-profit event organizer in Seattle, Washington, reported over \$100,000 in additional fees when using a private charter operator to provide service comparable to that previously provided by a public transit agency. Differences in costs were also apparent in Seattle, Washington, even after FTA exempted King County from the regulation in December 2009. During the 2010 University of Washington football season, the King County Metro Transit was unable to provide service for a day game that occurred during Seattle's rush hour. According to University officials, the cost of using private charter operators for the one game was more than \$580,000, which exceeded the cost the university spends on transportation with King County Metro Transit for an entire season.

Although out-of-pocket costs to consumers increased for the events we reviewed, we could not assess and compare the full costs of charter service between public transit and private charter operators for any of the events. Private charter operators would not disclose their cost and pricing data because they consider it business sensitive information. However, we were able to identify the different factors the public and private organizations used to determine the costs of services. Private charter operators used fixed costs, such as payments of bus loans (principal and interest), rent, maintenance, daily operations and insurance; variable costs, such as fuel, tolls, drivers' salaries, workers' compensation and benefits; and profit to calculate the full cost of a charter service. The largest cost for private operators is the equipment, with buses averaging \$500,000 each. In contrast, the factors public transit agencies use to develop rates for charter services primarily include drivers' wages, fuel, and maintenance. Additionally, public transit agencies may receive up to 80 percent of their funding for certain capital costs from the Federal Government. They also receive a full fuel tax exemption, compared to private charter operators' partial fuel tax exemption.

Availability. Although event sponsors and consumers remain concerned about the increase in out-of-pocket costs following the 2008 revision of the regulation, the availability of charter services was successfully maintained in some areas. For example, a consortium of five private charter operators came together to provide park-and-ride transportation to and from the Baltimore Ravens games after the Maryland Transit Administration (MTA) discontinued its services for the events.

At three large urban areas we visited, stakeholders believed private charter operators were more effective in providing certain transportation services. According to transit officials in Seattle, Baltimore, and Washington, D.C., many of the charter services they were providing before the 2008 regulation would be provided more efficiently by private charter operators, especially for events that required moving small groups of people. For example, Seattle's King County Metro Transit was agreeable to transitioning 24 of its 29 events, such as craft and garden shows, to private charter operators.

In contrast, the availability of charter service in some rural and nonurban areas was adversely affected. Increased penalties and a lack of understanding of the regulation's exceptions led some rural and nonurban transit agencies to discontinue services without a private charter operator to fill the transportation need. According to regional transit officials in Iowa and South Carolina, there are few or no private charter operators in their areas. These officials also stated that the available private charter operators were either unwilling to fill the need because of the costs or submitted expensive quotes to cover costs. For example, one rural transit agency in Iowa provided examples of three trips for seniors that were canceled due to the high costs of private charter transportation, such as that for a 4-hour trip for 15 low-income seniors at costs ranging from \$680 to \$1,600 per trip.

Quality. Revisions to the regulation also had varying impacts on the quality of transportation. We spoke to charter service stakeholders in our case studies about vehicle characteristics, transportation of persons with mobility problems, traffic congestion, and contingency planning in the event of an emergency. The regulation prevents requests for charter service from specifying characteristics of buses that would eliminate private charter operators. That is, a request for charter service cannot specify a requirement for buses with low floors or buses fueled by natural gas because public transit agencies typically own these types of assets. The public transit agencies and event sponsors we interviewed stated that the differences between vehicles owned by private charter operators and public transit agencies affected quality. Many of the private charter operators own over-the-road buses or vans designed for comfort of passengers on longer trips, whereas public transit buses are designed to move large numbers of people quickly. For example, event planners for a bicycling event in Ames, Iowa, stated that passengers experienced longer load and unload times on private charter buses taking them to and from the event because the buses lacked two doors and passengers had to climb steps to board the buses. On the other hand, officials with the Seattle Seahawks reported that fans riding private charter, over-the-road coaches to football games had a positive experience on private charter buses that included amenities such as rest rooms.

Most event sponsors and at least one private charter operator in our case studies expressed concern over the quality of service for passengers with mobility issues. We did not find any instances where a private charter operator violated the Americans with Disabilities Act (ADA) in our case studies, but private charter operators and public transit agencies have different regulations and requirements for compliance with the ADA. Public transit vehicles must be 100 percent ADA compliant, whereas private charter operators must be able to provide ADA-compliant vehicles within 48 hours of receiving a request for such service. One private charter operator in Iowa experienced challenges transporting passengers for the National Veterans Golden Age Games. The company stated that it was looking into purchasing transit style buses to service events where there may be large numbers of people with mobility issues. Other private operators stated that for major events they supplement their normal fleet with ADA-compliant vehicles to meet the demand of passengers with mobility problems.

The revised regulation also impacted local officials planning efforts to mitigate traffic congestion in one case study location. Specifically, public transportation was an integral factor in the planning and development of urban stadiums in Seattle before FTA revised the regulation. Seattle is bordered by large bodies of water and has a limited number of highways servicing the areas where the large stadiums are located. To mitigate congestion and limit disruption to city commuters, city planners included the use of King County Metro Transit vehicles in Transportation Management Plans during the development phase of the stadiums. Representatives from the community, local government, and event sponsors negotiated these plans. After the 2008 regulation revision, several major event sponsors in Seattle switched to private charter operators for transportation. According to local officials and event sponsors at Seafair¹⁵ and the University of Washington, they experienced several challenges in transitioning to private charter operators. These challenges included slow loading and unloading times, the use of out-of-town drivers who were unfamiliar with local traffic patterns and streets, and poor communications with police responsible for traffic management.

In another case study, the revised regulation affected plans to respond to an emergency at large sports stadiums. City officials in Baltimore, Maryland, considered public transportation when developing contingency plans in the event of an emergency at downtown stadiums. Both local and Baltimore Ravens officials considered public transit drivers and vehicles more prepared to respond in the event of an emergency. According to Ravens officials, if an emergency were to happen at the stadium, transit bus drivers would have already been trained in evacuation and emergency response procedures, unlike private charter drivers.

¹⁵ Seafair is Seattle's 60-year-old summer festival focused on community events. The festival includes parades, hydroplane boat races, and air shows.

Although not part of their standard training, private charter operators stated that they could also assist in an emergency response if needed.

Elements of the Revised Regulation Remain Unclear for Some Private Charter Operators and Public Transit Agencies

Our case studies identified several instances in which either private charter operators or public transit agencies did not clearly understand the regulation, which underscores the ongoing challenge FTA faces in ensuring stakeholders comply with the regulation. Some rural transit officials have expressed a need for additional FTA outreach because they do not fully understand how to navigate the regulation's QHSO provisions. For example, according to a rural Iowa public transit agency, it did not understand why the regulations permit the public transit agency to provide transportation for a QHSO but not to other community organizations that provide similar services, such as transportation of preschool children to activities. Local officials also stated that the rural transit agency is the only organization in the vicinity that provides transportation assistance and cannot understand why an out-of-town private charter operator is brought in to provide transportation for a 2-mile trip. Another rural Iowa transit organization with two employees stated that it lacks the manpower to review and get a clear understanding of this particular provision of the regulation, and views the process of applying for a waiver or exception under the regulation as an administrative burden. According to FTA, one of the purposes of the exceptions in the regulation is to maintain flexibility for public transit agencies in nonurbanized and small urbanized areas to provide community-based public transportation, such as serving individuals with mobility limitations due to age, disabilities, or level of income.

Additionally, officials in Seattle requested that FTA either clarify the intent of the rule regarding the leasing of publicly funded transit assets or revise the regulation. Specifically, a private charter operator in Seattle contracted to provide charter service that King County Metro Transit previously provided to University of Washington football games. The private charter operator certified to the public transit agency that it had sought assistance and vehicles from all other companies in the geographic area and no assistance was available. As a result, the university agreed to allow the private charter operator to lease all transportation services from King County Metro Transit. For a period, the university paid the private charter operator, which in turn paid the public transit agency to provide the entire service. While the parties involved met the requirements of the regulation, transit officials questioned whether the leasing of all or most of the service from public transit aligned with the intent of the rule and unnecessarily increased the university's costs.

Ultimately, officials at King County Metro Transit suggested that FTA revise the regulation to include a requirement for private charter operators to provide some meaningful percentage of the service before being allowed to lease from public transit agencies. FTA officials stated that exceptions have been granted to public transit agencies in situations where no private charter operator can provide all the needed service. According to the private charter operator in the University of Washington situation, it was not given an opportunity to demonstrate its ability to perform the service before King County was exempted from the rule.

As the Federal agency responsible for issuing the charter service regulation, FTA's role is to provide information so that stakeholders clearly understand the nature and requirements of the charter service regulation. After publication of the 2008 regulation, FTA initiated activities to educate the public, public transit agencies, and private charter operators on provisions of the revised regulation. FTA's outreach activities included holding information sessions in five major cities throughout the country and meeting with public transit and private charter industry stakeholders. According to FTA officials, they held regular staff meetings and tracked stakeholder issues related to the implementation of the rule through September 2010. However, many of these efforts have since subsided.

CONCLUSION

Charter services are essential to meeting the transportation needs of Americans, from getting them to large national events or to small occasions in their local communities. With the issuance of its latest regulation 4 years ago, FTA took action to resolve longstanding conflicts and misunderstandings between public transit agencies and private charter operators about their roles in meeting charter service needs. However, weaknesses in FTA data and continuing misinterpretations of the regulation's requirements still exist. By providing public and private stakeholders with access to more timely and reliable information, including advice and education on how to most effectively carry out the regulation's requirements, FTA can help ensure fair competition for charter services while at the same time provide the flexibility permitted under the regulation. Further, gaining a better understanding of the rule's impact on the cost, availability, and quality of charter service would help FTA target renewed outreach efforts and determine whether it needs to modify the regulation.

RECOMMENDATIONS

We recommend that the Federal Transit Administrator:

1. Develop a process for FTA staff to perform periodic data quality reviews of the private charter registration database and the charter service docket to address noncompliance, inaccuracies, duplication, and timeliness of charter service information.
2. Develop a process to coordinate with FMCSA to periodically verify the private charter registration data.
3. Include a link to FMCSA's Bus and Passenger Carrier Safety information on the FTA Charter Web site.
4. Resume tracking stakeholder issues and concerns, such as cost, quality, and availability of charter services, to determine whether revisions to the rule are needed, or if additional outreach and guidance is needed to help event sponsors, private charter operators, and public transit agencies effectively interpret the regulation.
5. Provide specialized outreach and guidance to help non-profit and human services agencies navigate the application process for Qualified Human Service Organization status.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FTA with our draft report on March 14, 2012, and received its response on May 4, 2012. FTA's response is included in its entirety as an appendix to this report. We made technical clarifications in the final report, where appropriate, based on FTA's input to the draft report. FTA partially concurred with recommendation 1 and fully concurred with recommendations 2, 3, 4, and 5.

For recommendation 1, FTA partially concurred, stating that the accuracy of the information reported to the private charter registration database rests with reporting entities. However, FTA's administration of the database requires a level of due diligence to maximize its effectiveness and ensure data quality. During the course of our audit, FTA showed its commitment to providing quality data to charter service providers, which included verifying that private charter operators update their data every 2 years. When we pointed out several inaccuracies in the database, FTA moved quickly to update the data. Further, we expect FTA's

planned actions for recommendation 2, which involve coordination with FMCSA, will also help meet the intent of recommendation 1 by leveraging existing data on private charter operators. We consider this recommendation resolved but open pending receipt of documentation supporting actions taken for recommendation 2.

For recommendations 2, 3, and 5, we consider FTA's planned actions responsive and consider these recommendations resolved but open pending receipt of documentation supporting the actions taken.

For recommendation 4, FTA concurred and agreed to continue to conduct outreach and monitor stakeholder issues via existing conferences for event sponsors, private charter operators, and public transit agencies to assist them with effectively interpreting the regulation. FTA is already a participant in national transit conferences and conducts internal agency management meetings that include regional offices, which are venues for obtaining ongoing feedback on the regulation as well as identifying and addressing potential cross-cutting concerns of charter service stakeholders. Accordingly, we consider this recommendation resolved but open pending receipt of documentation on FTA's specific plans to seek input from internal and external stakeholders through existing venues.

ACTIONS REQUIRED

FTA's planned actions for all five recommendations are responsive, and its target action dates are appropriate. In accordance with follow-up provisions in Department of Transportation Order 8000.1C, we request that FTA provide our office, within 30 days of this report, documentation of its plan to seek input from internal and external stakeholders through existing venues. We also request that FTA provide information demonstrating completion of its planned actions. All five recommendations will remain open pending receipt of this information.

We appreciate the courtesies and cooperation of Federal Transit Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Gary Middleton, Program Director, at (202) 366-0625.

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cc: Audit Liaison, FTA, TBP
Audit Liaison, OST, M-1

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit from November 2010 through March 2012 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We interviewed personnel from FTA's Office of Chief Counsel, the Ombudsman for Charter Services, and the Office of Program Management at FTA Headquarters in Washington, D.C., and officials in four of FTA's 10 regional offices. The purpose of our interviews was to determine individual roles, responsibilities, and direct involvement in the implementation of the 2008 charter service regulation.

To evaluate FTA's implementation of the charter service regulation, we reviewed FTA's charter service final rules and demonstration report, charter service guidance, policies and procedures, and planning and outreach documentation for the charter service regulation. We reviewed other relevant laws, acts, and rulemaking documents that established the charter service regulation as well as amendments to the final rules. We reviewed congressional appropriations documents and court filings and decisions associated with the charter service exception for King County, Washington.

We reviewed the process FTA used to respond to requests for decisions from private charter operators and public transit agencies by obtaining FTA's charter service indices and charter service records in the Federal docket system for the years 2008 through 2011. We analyzed advisory opinions, petitions for exceptions, general complaints, cease and desist orders, and complaints for removal. We assessed the number of requests filed and FTA's timeliness to render a binding decision based on the charter service regulation. In addition, we reviewed quarterly reports from public transit agencies that provided charter service under the regulation's exceptions guidelines.

We examined 609 registered private charter operators in FTA's private charter registration database to ensure the accuracy and reliability of the data. We obtained electronic files of charter service registrants and compared the data to the Federal Motor Carrier Safety Administration's Safety and Fitness Electronic Records and Licensing and Insurance Public systems to ensure that the charter company held proper operating authority, licensing, and insurance; was not barred from providing charter service; and met requirements of the charter service

regulation. We also verified the data compared in both systems for accuracy and consistency.

To assess the impact of the 2008 charter service regulation revision on the cost, availability, and quality of charter service at selected locations, we conducted our fieldwork using a case study approach that included meetings with motor coach and bus associations, private charter operators, public transit associations, public transit agencies, local government officials, and event organizers. We selected the case studies based on geographic location, population, receipt of Federal funds, and information gathered through discussions with public and private stakeholders. Our four case study locations were the Baltimore, Maryland, and Washington, D.C., area; Seattle, Washington; the Augusta, Georgia, and Florence, South Carolina area; and the Des Moines and Ames, Iowa, area. We also interviewed regional counsel and administrators in Atlanta, Georgia; Kansas City, Missouri; Philadelphia, Pennsylvania; and Seattle, Washington, the four FTA regions where we conducted case studies.

We used key factors in selecting a mix of case study locations. Specifically, the Baltimore, Maryland, and Washington, D.C., area is a large-sized urban area that was easily accessible to our auditors; Seattle, Washington, is exempt from the 2008 charter service regulation; the Augusta, Georgia, and Florence, South Carolina, area is a small-sized rural area; and Des Moines and Ames, Iowa, is a mid-sized urban and rural area with known issues concerning the charter service regulation. For our case studies, we interviewed and gathered documentation from stakeholders, including event organizers and sponsors, public transit agencies, local government officials, and private charter operators. We reviewed quality of service, ridership, safety and security requirements, accessibility, changes in service, and cost-of-service data associated with the regulation.

EXHIBIT B. ORGANIZATIONS VISITED OR CONTACTED

FEDERAL TRANSIT ADMINISTRATION (FTA)		
Offices	Location	
FTA Headquarters	Washington, DC	
FTA Region 3	Philadelphia, PA	
FTA Region 4	Atlanta, GA	
FTA Region 7	Kansas City, MO	
FTA Region 10	Seattle, WA	
BALTIMORE, MD / WASHINGTON, DC CASE STUDY		
Organization	Location	Type
Maryland Transit Administration	Baltimore, MD	Public Transit
Washington Metropolitan Area Transit Authority	Washington, DC	Public Transit
Bill Rohrbaugh's Charter Service, Inc.	Manchester, MD	Private Charter
Golden Ring Travel	Baltimore, MD	Private Charter
Preakness	Baltimore, MD	Event Sponsors/Organizers
Ravens	Baltimore, MD	Event Sponsors/Organizers
Baltimore City Department of Transportation	Baltimore, MD	Government Entity
SEATTLE, WA CASE STUDY		
Organization	Location	Type
King County Metro Transit	Seattle, WA	Public Transit
Starline Luxury Coaches	Seattle, WA	Private Charter
Bellair Charters	Ferndale, WA	Private Charter

Exhibit B. Organizations Visited or Contacted

NorthWest Navigator Luxury Coaches	Portland, OR	Private Charter
Mariners	Seattle, WA	Event Sponsors/Organizers
Seafair	Seattle, WA	Event Sponsors/Organizers
Seahawks	Seattle, WA	Event Sponsors/Organizers
University of Washington Athletic Department	Seattle, WA	Event Sponsors/Organizers
Seattle Department of Transportation	Seattle, WA	Government Entity
Seattle Police Department	Seattle, WA	Government Entity

AUGUSTA, GA / FLORENCE, SC CASE STUDY

Organization	Location	Type
Augusta Public Transit	Augusta, GA	Public Transit
Richmond County Transit	Augusta, GA	Public Transit
Pee Dee Regional Transportation Authority	Florence, SC	Public Transit
Horizon Motor Coach	Harlem, GA	Private Charter
Lewis Bus Lines	Augusta, GA	Private Charter
Savannah River Charters and Tours	North Augusta, SC	Private Charter
Augusta Convention and Visitors Bureau	Augusta, GA	Event Sponsors/Organizers
Augusta Sheriff's Department	Augusta, GA	Government Entity
Augusta Traffic Engineering Division	Augusta, GA	Government Entity

DES MOINES and AMES, IA CASE STUDY

Organization	Location	Type
CyRide	Ames, IA	Public Transit

Exhibit B. Organizations Visited or Contacted

Des Moines Area Regional Transit Authority	Des Moines, IA	Public Transit
Iowa Public Transit Association	Various Locations in Iowa	Public Transit
CIT Charters, Inc.	Ames, IA	Private Charter
Hawkeye Stages, Inc.	Des Moines, IA	Private Charter
Trans Iowa Charters, LLC	Des Moines, IA	Private Charter
Ames Convention and Visitors Bureau	Ames, IA	Event Sponsors/Organizers
HyVee Triathlon	Des Moines, IA	Event Sponsors/Organizers
Iowa State University	Ames, IA	Event Sponsors/Organizers
Iowa State Fair Authority	Des Moines, IA	Event Sponsors/Organizers
The Principal Charity Classic	Urbandale, IA	Event Sponsors/Organizers
Des Moines Area Metropolitan Planning Organization	Des Moines, IA	Government Entity
City of Des Moines Traffic Division	Des Moines, IA	Government Entity
Des Moines Police Department	Des Moines, IA	Government Entity
OTHER PUBLIC TRANSIT AGENCY		
Organization	Location	Type
Rochester Genesee Regional Transportation Authority	Rochester, NY	Public Transit
INDUSTRY ASSOCIATIONS AND UNIONS		
Organization	Location	Type
Amalgamated Transit Union	Washington, DC	Transit Union (Public and Private)
American Bus Association	Washington, DC	Industry Association

Exhibit B. Organizations Visited or Contacted

American Public Transportation Association	Washington, DC	Industry Association
Community Transportation Association of America	Washington, DC	Industry Association
United Motorcoach Association	Alexandria, VA	Industry Association

EXHIBIT C. SIGNIFICANT CHANGES TO THE CHARTER SERVICE REGULATION

Revised definition of charter service – This was a controversial provision during the negotiated rulemaking discussions. FTA attempted to clarify the definition, while also offering flexibilities through exceptions in the rule to fulfill public transit agencies community-based public transportation missions. Under the revised regulation, public transportation agencies are considered to be providing charter service if a third party requests exclusive use of a bus or van for a negotiated price or pays for the transportation, or if the transportation is to events that occur on an irregular basis or for a limited duration, and where a higher rate than the usual public transit fare is charged.

New private charter registration database – This allows private charter operators to indicate areas where they would be willing to perform charter service. In addition, public transit agencies that receive requests for charter service can notify private charter operators in their geographic area of the business opportunity. After receiving a request for charter service, a public transit agency may (1) decline to provide the service with or without referring the person requesting the service to the charter registration Web site, (2) provide service under one of the charter service exceptions, or (3) provide notification of the request to registered charter providers. If a public transit agency is interested in providing the service, the agency must send an e-mail notification to charter operators who are registered on the FTA Web site in the transit agency’s geographic service area. A public transit agency may provide the service if no private charter operator responds to the notification.

New Qualified Human Service Organization Registry – This allows qualified human service organizations that serve individuals with low income, advanced age, or disabilities to register with FTA to receive free or reduced rate services from a public transit agency. The charter service regulation provides an automatic exception to the regulation for qualified human service organizations that receive funding from one of 64 Federal human service programs listed in Appendix A of the regulation. Those qualified human service organizations that do not receive assistance from one of the programs listed in the regulation may apply for an exception through FTA’s Qualified Human Service Registry.

Exemptions and exceptions for when public transit agencies may provide charter service – Exemptions from the rule include transporting transit employees for training purposes in nonurbanized areas, performing emergency preparedness and planning operations, responding to immediate emergencies, and serving populations covered by specific Federal grants dedicated to program purposes. FTA also provides exceptions that allow transit agencies to conduct charter service

for Government officials on Government business for up to 80 hours per year, QHSOs, and private charter operators leasing vehicles and drivers from the public transit agency. Public transit agencies can also provide charter service when service is agreed upon by all private charter operators registered in the same geographic area in FTA's database. Finally, public transit agencies can provide charter service by petitioning the FTA Administrator for an exception due to (1) events of regional or national significance, (2) hardship for areas under 200,000 in population, and (3) unique time-sensitive events.

Processes for advisory opinions, complaints, and hearings and penalties for violations of the regulation – Private charter operators and public transit agencies may request formal advisory opinions and cease and desist orders¹⁶ related to charter service issues. They typically request an advisory opinion from FTA to help them interpret and apply the regulation correctly. According to the regulation, FTA will make every effort to respond to a request for an advisory opinion within 10 days of receipt of a request that includes the required information.¹⁷ A more detailed complaint process allows private charter operators and public transit agencies to petition for the removal of a registered charter provider or QHSO from the charter registration Web site for reasons such as bad faith, fraud, lapse of insurance, and lapse of documentation.¹⁸ Private charter operators may also make complaints against public transit agencies providing service that is prohibited under the charter service regulation.¹⁹ To improve transparency, FTA created public dockets in the Federal Document Management System for advisory opinions, petitions to the administrator for exceptions from the regulation, complaints, and hearings.

¹⁶ A request for a cease and desist order is a remedy that FTA may pursue if a public transit agency is found in noncompliance with the regulation.

¹⁷ 49 C.F.R. § 604.19(b).

¹⁸ 49 C.F.R. § 604.26.

¹⁹ 49 C.F.R. § 604.27(a).

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

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APPENDIX. AGENCY COMMENTS



U.S. Department
of Transportation
**Federal Transit
Administration**

Memorandum

Subject: **INFORMATION:** Management Response to OIG Draft Report on FTA's Implementation of the Charter Service Regulation Date: May 3, 2012

From: Peter Rogoff, Administrator
Federal Transit Administration

Reply to: Angela Dluger
Attn. of: (202) 366-5303

To: Calvin L. Scovel III
Inspector General

FTA Charter Regulation Focused On Market Based Competition

The fundamental purpose of the Federal Transit Administration's (FTA) charter service regulation is to prevent unfair competition by Federally-funded public transportation agencies (FTA grantees) for services that can be rendered by private charter bus operators. Historically, issues had arisen in some locations across the country with transit operators who receive Federal assistance, raising the perception of unfair competition for charter service against operators who do not receive Federal funds. Since the 1970's, FTA has served in a limited, market-focused role with regard to charter operations.¹ Specifically, FTA's charter service regulation allows FTA grantees to perform charter service only if there are no private operators willing and able to provide that service. This would include situations where, for example, private operators do not have sufficient equipment to perform the service. Moreover, the rules require private operators to act in a *commercially reasonable* manner in setting rates for their services.

FTA Does Not Currently Have Safety Regulatory Authority

FTA's role with regard to charter operations and availability is extremely limited. FTA is, by statute, not a safety regulatory agency and consequently does not ensure the compliance or suitability of private charter operators who register with FTA's Private Charter Registration

¹ Appendix 1 offers a more detailed description of the statutory and regulatory history of FTA's role with the charter bus industry.

Tool in order to be notified of potential business opportunities. It is also not FTA's role to regulate the charter marketplace, which means that FTA does not have legal authority over private charter operators and cannot regulate the cost of providing that service to individual customers. Instead, the Federal Motor Carrier Safety Administration (FMCSA) issues, administers, and enforces the Federal Motor Carrier Safety Regulations and Commercial Regulations that apply to commercial motor vehicles transporting passengers. FMCSA sets minimum safety standards that motorcoach companies must follow for the buses/vehicles they operate and the physical qualifications and operating rules for their drivers.

Charter Operators Need to Ensure They Provide Complete and Accurate Data

The data issues described in the draft report do not inhibit the effectiveness of FTA's regulation. While the draft report identified a few duplicate and incomplete private charter operator records on the FTA registration website, the effect of these issues is limited since the goal of the registration process is to provide private charter operators with knowledge of a potential business opportunity. We must emphasize that this information has no other effect, particularly with regard to safety. For example, based on OIG's analysis, 97 percent of registered private charter operators will receive business opportunity notices as intended, with the remaining few, which failed to indicate the geographic areas in which they are available to provide service, experiencing the outcome of providing inaccurate information. Inasmuch as this information is provided by the private charter operators, it behooves them to ensure that the information that they provide is both accurate and complete. It does not highlight the need to provide any additional intervention by the Federal government to fulfill the intent of existing statute or regulation.

While OIG's charge was to review the cost, quality, and availability of charter services, the statutory basis of FTA's charter regulations were not written to address these issues; hence, the regulation does not have specific mechanisms to track or address these issues. FTA conducted numerous outreach and training sessions following the publication of the regulation in 2008 and remains available to provide specific technical assistance to its grantees regarding this regulation. The outreach materials are posted on FTA's website, grantees have staff points of contact at FTA's regional offices and the docket system is available to review past decisions and to request new advisory opinions.

FTA uses oversight tools, such as its Triennial Reviews and State Management Reviews, to assess grantees' compliance with its charter requirements. Based on the significant decline in inquiries from participants since 2010, the extensive guidance available, and the use of these oversight mechanisms, FTA has reason to believe there is widespread comprehension of the requirements, and effective implementation of the rule. This is somewhat at odds with the limited anecdotal evidence of confusion presented in the report, which should provide a clearer sense of the extent of this issue based on its analysis.

Appendix. Agency Comments

RECOMMENDATIONS AND RESPONSES

Recommendation 1: Develop a process for FTA staff to perform periodic data quality reviews of the private charter registration database and the charter service docket to address noncompliance, inaccuracies, duplication, and the timeliness of charter service information.

Response: Concur in Part. The FTA charter service regulation is intended to prevent public transit agencies from unfairly competing with private charter operators. The Private Charter Registration Tool (the Tool) is designed to provide the public and public transportation agencies with information regarding private charter operators serving their areas. FTA conducts data quality reviews when new private operators register, as well as when the private operators re-register. The Tool is the mechanism that private charter providers use to self-report their contact information in order to receive notices of upcoming charter opportunities. As such, it is important that the registering private charter operator provides complete and accurate contact information. As a result, the responsibility for the accuracy of the information reported rests with those entities reporting and should not be shifted to the Federal government, particularly as this data serves the interests of those entities and does not directly bear on inherently governmental functions such as safety. Therefore, FTA believes its current data quality practices are adequate.

Responses to Advisory Opinion Requests or Complaints received through the charter service docket are provided directly to the requestors in advance of posting to the docket. Decisions and responses are updated in the docket as they become available. FTA will make every effort to issue Advisory Opinions and post timely decisions to the docket. While no further action is planned with regard to the registration data base, FTA will conduct action regarding the docket on a continuous basis. We therefore ask that this recommendation be closed.

Recommendation 2: Develop a process to coordinate with FMCSA to periodically verify the private charter registration data.

Response: Concur. FTA will develop a process to coordinate with FMCSA to review the operating status of private charter operators with DOT numbers that are registered in FTA's private charter registration database. FTA expects to implement this process by September 30, 2012.

Recommendation 3: Include a link to FMCSA's Bus and Passenger Carrier Safety information on the FTA Charter website.

Response: Concur. FTA will provide a link on its Charter Bus Registration website to the FMCSA Bus and Passenger Carrier Safety information page, <http://www.fmcsa.dot.gov/safety-security/pcs/Index.aspx>, which contains information for passenger carriers and the traveling public about FMCSA's passenger carrier program and regulations no later than June 30, 2012.

Appendix. Agency Comments

Recommendation 4: Resume tracking stakeholder issues and concerns, such as cost, quality, and availability of charter services, to determine whether revisions to the rule are needed, or if additional outreach and guidance is needed to help event sponsors, private charter operators, and public transit agencies effectively interpret the regulation.

Response: Concur and completed. FTA's charter service regulation issued in 2008 was a negotiated rulemaking that allowed for significant stakeholder input, notice and comment, and was published in the Federal Register. The regulation is intended to implement statutory provisions that prohibit public transit agencies from competing with private charter operators. It was not intended to address cost or quality of the service provided by private charter operators.

FTA already centrally tracks issues, particularly availability of charter service, via Advisory Opinion Requests and Complaints received through the charter docket. The precipitous drop in Advisory Opinion Requests and Complaints since 2010 indicates that a revision is not needed at this time. FTA will continue to conduct outreach at transit conferences and highlight existing training to assist event sponsors, private charter operators, and public transit agencies in effectively interpreting the regulation.

Recommendation 5: Provide specialized outreach and guidance to help non-profit and human services agencies navigate the application process for Qualified Human Service Organization status.

Response: Concur. FTA will prepare and provide specialized outreach and guidance to help non-profit and human services agencies navigate the application process for Qualified Human Service Organization status by December 31, 2012. FTA will arrange for a link on FTA's website to make available charter email questions and answers on this specific topic and will prepare a presentation on this topic which can be used at conferences.

Appendix I

Statutory and Regulatory Background

The National Mass Transportation Assistance Act of 1974² first required, as a condition of receipt of Federal financial assistance, that grantees not use Federal funding to foreclose private operators from providing charter bus services where such private operators were willing and able to provide that service. FTA’s predecessor agency, the Urban Mass Transportation Administration, first promulgated regulations to carry out the statutory mandate in 1976. The statutes and regulations remained largely unchanged until the enactment of Section 3023(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub.L. 109-59; Aug. 10, 2005) (SAFETEA-LU) in 2005. With the enactment of SAFETEA-LU, the report of the Conference Committee directed FTA to “initiate a rulemaking seeking public comment on the regulations implementing [49 U.S.C.] section 5323(d),” and to consider a number of specific issues pertaining to services for local governments and private non-profit agencies, use of the Internet for communications about the rules, enforcement of the rules, and the procedures for complaints and administrative appeals. *See generally*, the preamble to the January 14, 2008, regulations at 73 Fed.Reg. 2326-45. The regulation also protects federally funded assets which are intended to be used for public transportation from being used for non-public purposes.

To carry out the directives of the SAFETEA-LU conference report—and in compliance with the Negotiated Rulemaking Act of 1990, 5 U.S.C. §§ 56,1 *et seq.*—FTA convened a Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) comprised of 22 persons representing a cross-section of private charter bus operators, state and local public transportation agencies, organized labor, and regional and national associations from across the United States. From May through December 2006 the CBNRAC held five two- and three-day sessions to negotiate nearly a complete revision of the regulations, which ultimately led to FTA’s issuance of a Notice of Proposed Rulemaking (NPRM) on February 14, 2007, at 72 Fed.Reg. 7526-46. As a practical matter, an approximate 80 percent of the regulatory text set forth in the NPRM reflected the consensus reached through the CBNRAC. Although the committee members could not agree on all of the issues they debated—including a precise redefinition of “charter service,” and the meaning of the term “pattern of violations” in the remedies clause of 49 U.S.C. § 5323(d)(2)(C) (as amended by SAFETEA-LU Section 3023(c))—FTA was able to draft the balance of the NPRM based on its own experience and judgment, and the data and information developed during the negotiations.

FTA received more than 450 comments on the February 2007 NPRM from interested persons and organizations. Based on those comments, the agency made a number of revisions to the text of the proposed rules and deliberately incorporated a three-month lag between the promulgation of the final regulations in January 2008 and their effective date of April 30, 2008. FTA used that three-month “grace” period to conduct extensive outreach with grantees, private charter operators and a number of other stakeholders, and to fine-tune its Internet protocols for electronic registration of private charter operators interested in providing services within the grantees’ geographical service areas. Notwithstanding the difficult issues

² Pub.L. 93-503; Nov. 26, 1974

addressed throughout the rulemaking, FTA received a great deal of positive feedback about the rules from both public and private operators, and appreciation for its efforts to educate the grantees in how to comply with the rules.

The notification for private operators of opportunities to provide charter bus services was revised under the regulation based on input from all stakeholders. FTA grantees send an email notification of the charter opportunity to the list of private providers registered in the grantee's geographic service area. If no registered charter provider responds to that email notice, the grantee is free to perform the service. *See*, 49 C.F.R. §§ 604.9 and 604.14. Therefore, there should not be significant availability issues. If private operators cannot perform the city-wide and special events charter bus services that grantees had previously provided, then the grantees are able to continue providing those services. However, as a result of the regulation, FTA expected that a number of private charter operators across the United States would increase their capabilities and position themselves to perform many of the charter services previously provided by FTA grantees. For a number of larger and smaller events, private providers have stepped in to provide the service, i.e., for the Kentucky Derby and the Indy 500. The rule requires registration every two years to ensure that notification information is current and correct. FTA believes that the paperless process for notification is simpler and more efficient than the old process, saving both time and resources for grantees.